THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS:

A COMPARATIVE STUDY

- Staff Paper -

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SYNOPSIS

This background paper examines the ways in which social and economic rights have been protected under national constitutions and under regional and international treaties.

The paper discusses the distinctions that have traditionally been drawn between civil and political as opposed to social and economic rights. It explains that social and economic rights have been protected in a surprisingly large number of states -- over one-half of the countries of the world. The paper also describes the ways in which social and economic rights have been protected and defined under regional and international treaties.

The kinds of social and economic guarantees entrenched in other constitutions generally relate to subject matters like social assistance, health care, housing, employment, education, the environment and culture. These guarantees need not be specific, judicially-enforceable provisions. They can also be entrenched in the form of a general preamble, a list of non-justiciable principles or a general statement of governmental duties. Through the creative use of monitoring or supervisory agencies, the guarantees and principles contained in a social charter can guide government policies and provide a catalyst for public debate.

The examples of social and economic rights protection canvassed in this paper serve as a source of both encouragement and experience as Canadians examine the ways in which a social charter might be entrenched in their Constitution.

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I. INTRODUCTION

Recent constitutional discussions have raised concerns that Canada's national social programs may be eroded under a reformed, decentralized constitutional structure. In light of these and other factors, the Government of Ontario has proposed that a Canadian Social Charter be included in the Constitution to affirm the fundamental social values that Canadians hold in common.

This paper is a comparative study that examines the extent to which social and economic rights have been protected in other national constitutions and under regional and international treaties. The paper has four parts:

- The first part briefly defines and introduces the concept of social and economic rights.

- The second part surveys the national constitutions and United States state constitutions that contain guarantees of social and economic rights. This section illustrates that the entrenchment of social and economic rights can take a wide variety of forms and impose varying levels of state obligation.

- The third part explores the extent to which social and economic rights are protected under regional treaties. This part focuses on the European examples. It demonstrates how the content of social and economic rights can be defined through years of supervision and evaluation and provides examples of institutional structures that have been developed to monitor the protection of social and economic rights.

- The fourth part examines the international treaties that protect social and economic rights and assesses the reporting and supervisory mechanisms that have been developed to determine whether governments are fulfilling their treaty obligations.

The results of this study show that social and economic rights find expression in many national constitutions and in major regional and international treaties. Although they are often not enforceable in the courts, their entrenchment serves as an expression of shared values and aspirations and as a guide for national and intergovernmental policy-making.

II. DEFINING SOCIAL AND ECONOMIC RIGHTS

The term "social and economic rights" is used in this paper to refer to those rights that protect or provide for the basic necessities of life. These include rights that relate to social assistance, health care, housing, employment, education, the environment and culture, among others. Social and economic rights, as defined here, do not include classical liberal economic rights such as the right to property or the freedom to contract. In addition, they do not include the mobility rights to free movement of goods, services, persons and capital, which are regarded in the terminology of the European Community as the "four fundamental economic freedoms".

Social and economic rights are often contrasted with civil and political rights, which relate to legal rights in the criminal process, freedom of expression, association and movement, the right to liberty and security of the person, and democratic and equality rights. Most of the guarantees contained in the Canadian Charter of Rights and Freedoms, for example, are civil and political rights.

Western industrialized countries have generally given greater emphasis to civil and political as opposed to economic and social rights. However, as early as 1758, Montesquieu argued that the state "owed all citizens," among other things, "nourishment, suitable clothing, and the opportunity for a healthy life". The French Constitution of 1791 required the government to establish a system of free public education and a system of public assistance "to bring up abandoned children, relieve poor invalids, and furnish work to the able-bodied poor who cannot obtain it for themselves". As this paper discusses, social and economic rights and principles are currently contained in the constitutions of a majority of the countries of the world, including many Western industrialized nations.

At the international level, the United Nations General Assembly and other international bodies have declared that civil and political and social and economic rights are indivisible and interdependent. It has often been said that civil and political rights are

worthless unless the members of a society are provided with basic social and economic guarantees.

When the United Nations General Assembly set about creating an "International Bill of Human Rights" immediately after World War II, it initially gave equal weight to civil and political rights and social and economic rights. In 1948, the General Assembly passed the Universal Declaration of Human Rights, which proclaimed the inviolability of both civil and political and social and economic rights.

But in drafting the general international treaties that protect human rights, the United Nations decided to establish separate treaties to protect each set of rights. Civil and political rights are protected under the Covenant on Civil and Political Rights, which requires states who have signed the covenant "to respect and to ensure" the rights in the Covenant and provides for petitions from individuals to a quasi-judicial international body. Social and economic rights are guaranteed under the International Covenant on Economic, Social and Cultural Rights, which requires only the progressive implementation of economic, social and cultural rights and contains no provisions for petitions from individuals.

Distinctions in the treatment of social and economic rights and civil and political rights are founded mainly on the assumption that economic and social rights are "positive" rights whereas civil and political rights are "negative" rights. Social and economic rights are regarded as positive rights that are dependent on the availability of economic resources and require active intervention and financial effort on the part of the state. Civil and political rights are viewed as negative obligations, since they require the government to refrain from unreasonably interfering with the autonomy of an individual or group.

The positive/negative rights distinction has been relied upon by many to argue that social and economic rights are not "justiciable", i.e. that they cannot be adjudicated or enforced by courts. It is said that the protection of generally-worded positive obligations would require courts to deal with complex socio-economic and fiscal issues that are best

left to the legislatures. Indeed, the Supreme Court of Canada has often deferred to the legislatures in evaluating Charter claims that involve socio-economic legislation.[1]

However, it should be remembered that the judicial protection of civil and political rights may sometimes impose positive fiscal obligations on governments. For example, the Supreme Court of Canada's determination that trial delay beyond a certain period of time violates the Charter has required governments to hire more judges and Crown prosecutors to reduce court delay. Similarly, the Federal Court of Canada has ordered the government to provide paternity benefits to men in order to remedy its finding that Canada's maternity leave provisions violate the Charter's equality provisions.

In addition, the obligations required for protecting social and economic rights may sometimes be framed in negative terms. For example, the decision by a government to evict a squatter might be regarded as a direct infringement by the government of the individual's negative liberty to housing.

As Canadians examine the ways in which a "social charter" might be entrenched in their Constitution, it will be helpful to know how other countries and international organizations distinguish between negative and positive rights protection and the role that courts, legislatures or other bodies might play in their protection.

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[1] See, for example, Edwards Books and Art Ltd. v. The Queen, [1986] 2 S.C.R. 713; A.G. Quebec v. Irwin Toy Ltd., [1989] 1 S.C.R. 922; McKinney v. Board of Governors of the University of Guelph, [1990] 3 S.C.R. 229.

III. NATIONAL CONSTITUTIONS

A. INTRODUCTION

This part of the paper describes the extent to which social, economic and cultural rights have been entrenched in the constitutions of countries throughout the world, including the constitutions of the states in the United States. The information contained in this paper has been drawn from a survey of the written constitutions of the world.[2]

The paper does not consider the degree to which social, economic and cultural rights have been realized in fact in the countries concerned. Often, the constitutional expression of human rights fails to reflect economic or political realities or capabilities. In addition, abstract constitutional protections are often less important than concrete social programmes and fiscal arrangements, matters that are beyond the scope of this paper

B. THE RIGHTS PROTECTED

Over one-half of the constitutions of the countries of the world contain express provisions regarding social and economic rights or principles. The kinds of rights protected include:

- **social assistance** -- more than 55 constitutions refer to a right or state duty with respect to social assistance;

- **minimum standard of living** -- more than 30 constitutions refer to the right to a minimum standard of living, either as a guaranteed minimum right or as

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[2] The primary source of this information is A.P. Blaustein and G.H. Flanz, eds., Constitutions of the Countries of the World (1990) (updated). In light of recent political, social and economic changes in Eastern Europe and the Soviet Union, we have been unable to obtain accurate information about the constitutions of the countries in these areas.

a duty of the state to progressively raise the standard of living;[3] the right to food is guaranteed in 12 constitutions and the right to clothing it referred to in at least six; there are also constitutions in which the preamble or Directive Principles of state policy set out general state objectives to achieve an equitable distribution of wealth [4], or to manage the economy to secure maximum welfare and to provide adequate means of livelihood.[5]

- **health care** -- over 55 constitutions refer to a right or state duty with respect to health care;

- **housing** -- more than 30 constitutions enshrine a right or state duty with respect to housing;

- **employment** -- more than 60 constitutions refer to the right to work, either as a right per se inhering in the individual or as an aim of state policy;

- **education** -- more than 70 constitutions ensure the right to education, usually referring to it as the right to free education;

- **environment** -- the right to a clean and healthy environment is enshrined in at least 25 constitutions;

- **culture** -- well over 30 constitutions refer to the right to culture or to the state duty to promote culture.

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[3] Over 23 Constitutions refer to a guaranteed minimum standard of living, which is often expressed as a minimum guaranteed wage which will ensure a "decent standard of living", or one which will "ensure an existence worthy of a human being." Over eight national constitutions refer to a state duty to progressively raise the standard of living.

[4] See, for example, the Constitution of Ireland.

[5] See, for example, the Directive Principles of the Constitution of Ghana.

- **protection of the family** -- at least 25 constitutions refer to a state duty to provide special protection to the family, which may include maternity leave, day care or youth employment restrictions.

The following table provides a sample of the social and economic rights or principles that are contained in the national constitutions of a number of states that are members of the Organization for Economic Cooperation and Development (OECD). As the table notes, the constitutions of more than 20 states of the United States include in some manner a specific provision relating to the care of the need or the protection of the health of the people. These provisions of the national and state constitutions are set out in the appendices to this paper.

A SAMPLE OF OECD-MEMBER STATE CONSTITUTIONS THAT ENTRENCH SOCIAL AND ECONOMIC RIGHTS OR PRINCIPLES*

Country	Soc. Assis-tance/Ins.	Health	Housing	Employment	Education	Environment	Culture
Belgium					X		
Canada**							
Denmark	X			X	X		
Germany	X				X		
Greece	X	X	X	X	X	X	
Ireland	X			X	X		
Italy	X	X		X	X		
Japan	X	X		X	X		
Netherlands	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X
Spain	X	X	X	X	X	X	X
Switzerland	X				X	x	
Turkey	X	X	X	X	X	X	X
United States***							

Source: A.P. Blaustein and G.H. Flanz, eds., Constitutions of the World, (N.S.: Oceana Pub. Inc., 1990)(updated)

* This chart lists only those Constitutions that expressly guarantee social and economic rights or enshrine state obligations or principles. It does not include countries where the protection of social and economic rights have been established through judicial interpretation. The nature and extent of these guarantees varies greatly from country to country. For a detailed description see Appendix A and B.

** Canada's Constitution does not contain specific guarantees or statements of principle in any of these areas. However, s. 36(1) of the Constitution Act, 1982 states that the federal and provincial governments are committed to:

(a) promoting equal opportunities for the well-being of Canadians;
(b) further economic development to reduce disparity in opportunities; and
(c) providing essential public services of reasonable quality to all Canadians.

*** Although the United States Constitution does not guarantee social and economic rights, a number of Constitutions of U.S. states contain requirements for state governments to provide basic necessities for impoverished individuals. For a detailed description see Appendix C.

C. THE NATURE OF THE OBLIGATIONS

The American scholar Henry Shue has developed a three-tiered definition of social and economic obligations that has been adopted by many commentators and followed by the United Nations in much of its work in this area. This structure of government duties was originally used to examine the protection of subsistence rights but has been applied by commentators to both civil and political as well as economic and social rights. The three levels of obligations are:

(1) the primary obligation to respect: a government must not infringe a social right directly by, for example, expropriating the land of a subsistence farmer or destroying homes or evicting squatters without providing an acceptable housing alternative;

(2) the secondary obligation to protect: a government must prevent third parties from infringing social rights by, for example, tearing down low-income housing when no alternatives are available or violating health and safety workplace requirements;

(3) the tertiary obligation to fulfil: a government has a duty to provide food, shelter, health, education or other necessities to individuals without the means to provide for themselves.

This part of the paper uses this three-fold structure to organize our discussion of some of the social and economic guarantees contained in national and U.S. state constitutions.

1. The Obligation to Respect

Constitutional guarantees of social and economic rights are seldom phrased in terms of an obligation to respect. In general, such constitutional guarantees are stated as

affirmative duties, which by implication also guarantee the primary obligation to respect. For example, if a constitution requires the state to provide housing for the homeless it would also prevent the state from evicting a squatter unless the state provided the individual with adequate alternative shelter.

However, basic obligations to respect economic and social rights may be implied from the language of constitutions that do not expressly guarantee social and economic rights but contain broad protections of life or security of the person. In Canada, for example, the Supreme Court of Canada has expressly left open the possibility that the Charter's guarantee of life, liberty and security of the person might be used to prevent the government from depriving an individual of "those economic rights fundamental to human life or survival".[6]

The Indian Supreme Court has become internationally renowned for its efforts to infuse social and economic guarantees into protections for civil and political rights. The Constitution of India contains a section on civil and political rights that is expressly enforceable in the courts and a section entitled "Directive Principles of State Policy" that sets out certain social and economic rights that are expressly not enforceable in the courts. But the Indian Supreme Court has given indirect effect to the Directive Principles by interpreting civil and political rights such as the right to life to mean the right to an adequate quality of life, including adequate nutrition, clothing and shelter. As a result, the Court has been able to give some protection to the rights of people dwelling on the pavement in Bombay to be as close as possible to their place of work, the right to just and human working conditions, maternity relief, adequate prison conditions, and the right to earn a livelihood.

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[6] Irwin Toy v. A.G. Quebec, [1989] 1 S.C.R. 927 at 1003.

2. The Obligation to Protect

The government's duty to protect social or economic rights is contained in a number of national constitutions. For example, the Spanish Constitution requires the public authorities to guarantee the defence of consumers and users, protecting their safety, health and legitimate economic interests (Article 51). The Italian Constitution places limits on private economic enterprise so as "not to conflict with social utility or when prejudicial to security, freedom and human dignity" (Article 41). Decisions of courts in what was formerly West Germany have interpreted its Basic Law to require the state to regulate nuclear emissions and airport noise.[7]

A large number of constitutions require the government to regulate polluting activities and many of them contain detailed employment standards regarding workplace health and safety, hours of work and vacations. Other examples include the constitutions of Peru (the state regulates the production, quality and trade of food, chemical, and pharmaceutical products (Article 17)) and the Philippines (poor dwellers shall not be evicted nor their dwellings demolished (Article 10)).

3. The Obligation to Fulfil

The majority of social and economic rights guarantees contained in national constitutions fall into this third category. They create a positive obligation for the state to take action to fulfil the social or economic needs of an individual or group. These obligations have varying degrees of enforceability, ranging from statements that are hortatory or political in nature to provisions that are mandatory and specific enough to be enforceable.

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[7] For a discussion of the German law, see Currie, "Positive and Negative Constitutional Rights" (1986) 53 Univ. of Chicago L. R. 864 at 867 to 872.

(a) The General Preambular Statement

At one end of this continuum are those constitutions that contain a brief descriptive statement of general economic or social policy. For example, the German Basic Law, which prior to 1949 contained specific governmental duties to provide services like education, employment and social insurance, now sums up its social obligations with a statement that the Federal Republic "is a democratic and social federal state" (Article 21)[8]. The preamble to the Illinois Constitution states that the Constitution is established to "eliminate poverty and inequality; assure legal, social and economic justice; [and] provide opportunity for the fullest development of the individual". The preamble to the Hawaii Constitution affirms a belief in government with "an understanding and compassionate heart toward all the peoples of the earth." The importance and effectiveness of these kinds of statements will vary depending on the political, legal and constitutional context and traditions in the individual state concerned.

(b) The Detailed Statement of Principles

The next category of constitutions that contain provisions on social and economic rights are those that list a detailed set of state obligations in the form of principles and policy guidelines.

These statements are usually viewed as political rather than legal duties of government. In many countries, such as India, Ireland, and Spain, these social and economic rights, duties or principles are set out in a section separate from any guarantees

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[8] It can also be argued that Article 72 of the German Basic Law, which authorizes the federal government to legislate to maintain "uniformity of living conditions", requires the federal or Lander governments to maintain a certain level of social and economic entitlements throughout the country.

of civil and political rights, with titles such as "Directive Principles of State Policy".[9] Some constitutions expressly provide that these principles are not enforceable in a court of law.[10]

In the absence of an express provision concerning justiciability it is often difficult to determine whether or not a social or economic duty is meant to be a statement of principle or a legally-enforceable duty. In these cases, the degree of judicial enforceability will presumably depend primarily on the specificity of the obligation. For example, it might be difficult for an individual to enforce the Mexican government's responsibility to "direct national development to guarantee ... more just distribution of income and wealth" (Article 25). Similarly, it is unclear whether s. 36(1) of Canada's Constitution Act, 1982 creates any legally-enforceable obligations for Canadian federal or provincial governments.[11]

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[9] Other countries that maintain this type of distinction in their constitutions include Bangladesh, Costa Rica, Ghana, Laos, Liechtenstein, Malta, Nigeria, Pakistan, Papua New Guinea, Paraguay, and the Philippines.

[10] The Constitutions of Bangladesh, India, Ireland, Malta, and Pakistan include such express provisions. The Spanish Constitution (Art. 53) specifies that civil and political rights are justiciable while social and economic principles "shall guide positive legislation, judicial procedure and the public authorities."

[11] Section 36 (1) provides:

> 36.(1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect tot he exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to
>
> (a) promoting equal opportunities for the well-being of Canadians;
> (b) furthering economic development to reduce disparity in opportunities; and
> (c) providing essential public services of reasonable quality to all Canadians.

(c) The General Mandatory Duty

This category comprises constitutional provisions that require the state to take steps to fulfil social and economic rights but indicate that the means and degree of their realization are solely within the discretion of the state. Often, these constitutions set out economic and social rights as abstract duties and rights with the express provision that specific details as to minimum standards and conditions must be left to the legislature.

For example, the Constitution of Japan states that "all people shall have the right and obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law." (Article 27)[12]. Similarly, the Constitution of Spain provides that "All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote conditions necessary and establish pertinent norms to make this right effective." (Article 47). Under the Mexican Constitution, "every family has the right to enjoy decent and proper housing" but "the law shall establish the instruments and necessary supports to reach said goal." (Article 4).[13]

Even when a provision reserving the concrete implementation of social and economic rights to the legislature is not explicit in the Constitution, courts will often read in such a provision. For example, the Article 25 of the Japanese Constitution provides that:

> All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the state shall use its endeavours for the promotion and extension of social welfare and security and of public health.

The Supreme Court of Japan has held that it is solely within the discretion of the Minister of Health and Welfare to determine what "minimum standards of wholesome and cultured

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[12] Many other national constitutions contain similar requirements that oblige the national governments to establish employment standards.

[13] Further examples can be found in the constitutions of Luxembourg, Peru, Turkey, Spain, Senegal, Malta, Korea, Italy and Paraguay.

living" actually mean and that the court cannot step in to set a minimum standard.[14] Similarly, courts in the states of New York and Illinois have emphasized that the legislatures have broad discretion in fulfilling the state constitutional duties to care for the needy.[15] Some national constitutions contain express provisions that state obligations are to be limited by the availability of fiscal resources.[16]

(d) The Specific Mandatory Duty

This kind of constitutional provision is distinguished from the last category by the specific nature of the right it protects and the duty it imposes. Generally, in such constitutions, social and economic rights are phrased as rights inhering in the individual or as mandatory and specific government duties. For instance, the right to health is expressed in the Constitution of Italy as a positive duty of the republic to provide "health safeguards as a basic right of the individual" and to grant medical assistance to the indigent free of charge (Article 32). The constitutions of many countries provide that education, at least at the primary level, shall be free. The Constitution of Colombia provides not only that elementary education shall be free but that the national government must spend not less than 10% of its overall budget on public education (Article 41). The Constitution of Liechtenstein asserts that the state shall provide for an equitable system of taxation which shall exempt incomes below a bare minimum from taxation (Article 29). The Swiss Constitution requires the federal government to provide illness and accidents insurance, unemployment insurance, maternity insurance and old age and survivor's insurance (Article 34). The Portuguese Constitution is noteworthy for its detailed description of the legislative measures and social programmes that it requires the state to adopt.

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[14] For a discussion of the Japanese Constitution's provisions on social and economic rights, see Osuka, "Welfare Rights" (1990), 53 Law and Contemporary Problems 13.

[15] See the discussion in Braveman, "Children, Poverty and State Constitutions" (1989) 38 Emory Law J. 577 at 599-600. Note, however, Braveman's discussion of a decision of the Montana Supreme Court, which struck down a state law granting needy, able-bodied persons without children aid for only two months in any single year.

[16] For example, the Constitutions of Turkey, El Salvador, Gabon, Pakistan, India, and Jordan have such provisions.

D. MECHANISMS OF ENFORCEMENT

Very few of the national constitutions surveyed for this study contain provisions that state how social and economic guarantees are to be enforced. The Portuguese Constitution establishes the office of Ombudsman and authorizes the Constitutional Court, on the request of the Ombudsman and other specified officials to "judge and verify" claims that the state has omitted to comply with the provisions of the Constitution (Article 283). The Mexican Constitution provides that the general minimum wage must be sufficient to satisfy the normal material, social and cultural needs of the head of a family and creates a National Commission to fix this minimum wage. To protect the right to decent and proper housing, the Mexican Constitution creates a National Housing Fund and a national agency composed of government, workers' and employers' representatives to direct the fund. The Philippines Constitution entrenches a Human Rights Commission.

But beyond these few examples, we have found it impossible, without further detailed study, to identify and assess the mechanisms that are relied on to enforce the social and economic guarantees contained in the national constitutions surveyed. The next two parts of this paper, which examine regional and international protection of social and economic rights, provide a more detailed and useful examination of mechanisms for enforcing these guarantees.

E. SUMMARY

A large number of national constitutions entrench provisions that deal with economic and social principles or guarantees. The most common guarantees involve rights to social assistance, health care, housing, employment, education, environment and culture. The provisions vary greatly with regard to the type of obligation they impose on the government and the degree of specificity of the obligation. Although these provisions are often not enforceable in the courts, their entrenchment serves as an expression of shared values and aspirations and as a guide for national policy-making.

IV. REGIONAL CONVENTIONS

A. THE EUROPEAN SOCIAL CHARTER

1. Introduction

The European Social Charter is often mistakenly linked to another charter of economic and social rights recently developed by the European Community, which is discussed below. In fact, the European Social Charter is the creation of the Council of Europe, an organization of 21 western European states that was established in 1949 in order to promote European unity.

In 1950, the Council of Europe adopted the European Convention on Human Rights, which guarantees civil and political rights. In 1961, the Council adopted the European Social Charter as a social and economic rights counterpart to the Convention. The Social Charter came into force in 1965. As of January 1991, it had been ratified by 17 of the member states of the Council of Europe -- Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Ireland, Iceland, Italy, Malta, the Netherlands, Norway, Spain, Sweden, Turkey and the United Kingdom.

2. Rights Protected

The rights protected under the Social Charter are set out in the first three parts of the Charter. Parts I and II establish a relatively detailed set of 19 rights and corresponding state obligations. The 19 rights protected are:

- the right to work (the opportunity to earn a living in an occupation freely entered upon);
- the right to just conditions of work;
- the right to safe and health working conditions;
- the right to fair remuneration;
- the right to organise;
- the right to bargain collectively;
- the right of children and young persons to protection;

- the right of employed women to protection;
- the right to vocational guidance;
- the right to vocational training;
- the right to protection of health;
- the right to social security;
- the right to social and medical assistance;
- the right to benefit from social welfare services;
- the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement;
- the right of the family to social, legal and economic protection;
- the right of mothers and children to social and economic protection;
- the right to engage in a gainful occupation in the territory of other contracting parties; and
- the right of migrant workers and their families to protection and assistance.

States that have ratified the Charter need not agree to be bound by the provisions regarding all of these rights. It is enough if they agree to five of seven essential rights (the rights to work, to organise, to bargain collective, to social security, to social and medical assistance, and the rights of the family and of migrant workers) as well as at least five other rights.

Although the Social Charter protects a relatively comprehensive set of social and economic rights, it does not include the right to education or cultural rights. Although there is no explicit reference to the right to a clean environment, this may be implicitly incorporated within the right to health protection.

An Additional Protocol to the Charter, adopted by the Committee of Ministers in 1988 but not yet in force, adds the following rights to those enumerated in the Charter: the right to equal treatment and equal opportunities in matters of employment without discrimination on the basis of sex, the right of workers to information and consultation, the right of workers to take part in the determination and improvement of working conditions, and the right of elderly persons to social protection.

A number of the rights dealt with in the Social Charter also form the subject of other conventions and agreements concluded by member States of the Council of Europe. For instance, standards of social security are dealt with in the European Code of Social

Security signed in 1964 and the right to social and medical assistance is also protected by the Convention on Social and Medical Assistance signed in 1953.

3. Enforcement Mechanisms

In contrast to the Convention on Human Rights,[17] the European Social Charter is "enforced" not by a court but by means of a procedure of reporting and supervision.[18] Despite the complexity of this procedure, it has worked relatively effectively and enabled the supervising bodies to build up a body of precedents that define the content of the rights protected under the Charter.

The reporting and supervision procedure under the European Social Charter contains two main stages: first, each country is required to make periodic reports to a Committee of Independent Experts (the "Expert Committee") concerning the extent to which its laws and practices comply with the provisions of the Social Charter; second, this report is reviewed first by the Expert Committee and then by a series of intergovernmental bodies that may make recommendations to states regarding their compliance with the provisions of the Charter.

As mentioned above, states are not required to agree to all the provisions of the Social Charter. With respect to the provisions they have accepted, states are required to

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[17] The Convention on Human Rights, as discussed above, guarantees civil and political rights in the 21 member states of the Council of Europe. Its provisions are enforced by the European Court of Human Rights, which can hear and decide petitions from both states and individuals. The European Court has no authority to enforce the European Social Charter. However, it has relied on the Charter's economic guarantees in determining that freedom of association and assembly as guaranteed in the Convention includes the right to strike.

[18] Proposals have been made to establish a system of direct petition to a judicial body for the economic, social and cultural rights protected in the Social Charter, but these have not been accepted. The Council of Europe is currently conducting a study that examines the possibility of adding an economic rights protocol to the European Convention on Human Rights.

provide reports to the Expert Committee every two years. States submitting these biennial reports are required to respond to a detailed questionnaire. In addition, states may be requested at intervals to submit reports on the sections of the Social Charter they have not accepted.

Copies of state reports are sent by the government concerned to national organizations of employers and trade unions for comment. All reports are submitted to the Secretary-General of the Council of Europe, who transmits them to the Expert Committee. The Committee is made up of independent experts rather than governmental or elected representatives. Although nominally independent from government, members of the Committee are selected from a list of nominees submitted by the governments of states that are members of the Council of Europe.

The Expert Committee's role is to determine whether the state is complying with its obligations under the Social Charter. In making its decision, it relies on the state reports but can also make use of any other material it has on hand. The Committee often relies on information from the International Labour Organization (ILO), discussed below, and may consult with ILO representatives. The Expert Committee also plays an important role, discussed below, in interpreting the provisions of the Charter.

The Expert Committee's report, known as its "Conclusions", are submitted, along with the government's report and the comments of the workers' and employers' organizations, to the Governmental Committee of the Social Charter. This Committee of government representatives may be assisted by selected organizations of employers and trade unions. The Governmental Committee then makes a Report to the Committee of Ministers, the primary decision-making body of the Council of Europe. The Expert Committee's Conclusions and the Governmental Committee's Report are also forwarded to the Parliamentary Assembly of the Council of Europe, which adopts an Opinion based on them. The Committee of Ministers. after examining the Conclusions of the Expert Committee, the report of the Governmental Committee and the opinion of the Assembly

may, by a two-thirds majority, make any necessary recommendations to a state that has violated its obligations under the Social Charter.

The Social Charter's provisions for reporting and supervision are designed to allow both independent experts and government representatives to have input into the process of elaborating standards and assessing whether states have complied with these standards. Not surprisingly, the views of the independent experts and the government representatives often conflict. The Governmental Committee consists of senior civil servants who have often been involved in the preparation of member states reports. Since they are charged with reviewing their own work, they have, as commentators have pointed out, a natural instinct to defend their ministers rather than call them to account.

Although the Expert Committee has on many occasions determined that states are not living up to their Charter obligations, the Committee of Ministers has been reluctant to address its "recommendations" directly to national governments. Early recommendations of the Committee of Ministers were very general in nature and referred to neither the rights that had been violated nor the countries involved. The Committee's recommendations now refer specifically to Charter provisions that have been violated but do not mention states by name. Commentators have suggested that the Committee of Ministers should address a recommendation to each individual state instead of producing one that applies to all member states.

4. Defining and Refining the Content of the Protected Rights

During its more than twenty years of operation, the European Social Charter Committee of Experts has built up a vast body of decisions contained in its "Conclusions". A review of some of this case law indicates how broad obligations of result can be defined and refined to create relatively specific social and economic standards.

The obligation to maintain as high and stable a level of employment as possible

According to the Committee, states need not guarantee a job for everyone who wants one. However, they must make full employment an objective of state policy. If a state abandons this objective in favour of an economic program providing for a permanent pool of unemployed, it will infringe this obligation. The state must adopt special measures to help those who are at a disadvantage in seeking work, either because of regional imbalance or because of disparities based on sex or age.

The Expert Committee has refrained from telling states how they should go about achieving full employment. But the Committee has required states to take measures to improve the unemployment situation within a given reporting cycle. Actual improvement is not necessary; a state need show only that it has made a "substantial effort to improve the labour market condition." Where a state takes measures to deal with inflation or with an economic recession that increase unemployment in the short term but are expected to reduce it later on, the Expert Committee has recommended that states take special steps to sustain employment while these measures are applied.

Free choice of occupation

The Committee has held that the coercion of any worker to carry out work against his or her wishes and without his freely expressed consent is a violation of the Charter guarantees. It has also interpreted the requirement of free choice of occupation to mean that the state must eliminate all forms of discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin in employment. For instance, Ireland was found to be in violation of this provision because its laws prohibited married women from employment in the civil service. States are required to take "positive, practical steps" to eliminate discrimination. For instance, the United Kingdom was found to be in compliance with this section of the Charter because it had implemented a Youth Employment Service Program that encouraged girls to take up jobs traditionally thought to be only for men.

Just Conditions of Work

The Charter also ensures a right to just and favourable conditions of work, which includes fair wages and equal pay for equal work, wages which ensure a decent standard of living for workers and their families, safe and healthy working conditions, and equal opportunity for advancement.

The Experts Committee has held that the expression "a decent standard of living" means different things in different countries. The Committee has stated that in defining the content of the duty to ensure a decent standard of living:

> account must be taken of the fact that the socio-economic status of the worker and his family changes, and that his basic needs, which at first are centred on the provision of purely material basic necessities such as food and housing, subsequently move towards concerns of a more advanced and complex nature, such as educational facilities, and cultural and social benefits. The concept of a decent standard of living must take account of the fundamental social, economic, and cultural needs of workers and their families in relation to the stage of development reached by the society in which they live; it must also for the present be judged in the light of the social and economic situation in the country which is being considered.

The "decency threshold" approach the Committee has adopted is based on the difference between the national average wage and the lowest wage actually paid in various sectors of the economy. Any wage that deviates from the national average to an excessive extent cannot be considered sufficient to permit a decent standard of living. This approach has received mixed reviews from the Governmental Committee of the Social Charter.

The Expert Committee has interpreted the guarantees of safe and healthy working conditions to mean that states are required to issue health and safety regulations for all economic sectors, that these regulations must be adequately enforced through inspection and criminal and civil sanctions, and that arrangements must be provided for consultations between labour and management on health and safety matters.

Health Protection

Under the Social Charter, states undertake to remove as far as possible the causes of ill health and to provide educational and advisory facilities for the promotion of health and to prevent diseases. The Expert Committee has concluded that a country has fulfilled its obligations if it can provide evidence of the existence of a medical and health system that includes the following elements:

- public health arrangements that provide an adequate supply of medical practitioners and equipment to ensure proper medical care for the entire population and the prevention and diagnosis of disease;
- special measures to protect the health of mothers, children and old people;
- measures aimed at the prevention of air and water pollution, protection from radioactive substances, noise abatement, food control, environmental hygiene, and the control of alcoholism and drugs;
- a system of health education;
- measures such as vaccination, disinfection and the control of epidemics, providing the means of combating epidemic and endemic diseases; and
- provisions that ensure that all or a substantial part of the cost of health services is born by collective bodies.

Social Security and Welfare

The Committee has indicated that where there is social insurance legislation providing benefits covering certain risks but there are substantial gaps in it and many benefits are very low, there may be serious doubt as to whether the measures in force could be termed a social security system. The Committee has looked to the International Labour Organization's Social Security (Minimum Standards) Convention to assess the minimum permissible level of social assistance that must be provided by a government. States are under a duty to progressively improve their social security systems. To find out

if states have improved their social security systems, the Committee examines whether increases in benefits have kept pace with increases in the cost of living.

State duties under this section are not met unless migrant workers from other states who have ratified the Charter have the same access to social assistance as nationals of the country. The restriction of social security benefits to citizens of one state alone is a violation of the Charter. The Charter also prohibits states from discriminating against persons who receive social assistance.

Social and Medical Assistance

The Charter requires states to provide social and medical assistance to those in need, taking into account the prevailing cost and standard of living within the state concerned. The Expert Committee has insisted that states have in their laws a criterion by which neediness is assessed. For example, West Germany was found to be in compliance by providing a means test that relates a person's income and other available assets to the cost of living. Italy was held to have violated this duty because its legislation did not establish this kind of objective criteria.

According to the Expert Committee, the right to social and medical assistance must be enforceable before a domestic court or tribunal. The United Kingdom for example, has been held to meet this requirement by providing that a person may apply for supplementary benefits to the Ministry of Social Security and may appeal a negative decision to an independent appeal tribunal.

The Right to Benefit from Social Welfare Services

The services referred to in this obligation are "services which use methods of social work and contribute to the welfare and developments of both individuals and groups in the community and to their adjustment to the social environment." States can fulfil this duty

by providing public services or promoting private ones. The Expert Committee has held that these services must be available as a matter of legal right enforceable in the courts.

5. Summary

The European Social Charter has always had a much lower profile than its civil and political rights counterpart, the European Convention on Human Rights. But the Charter has been in effect for more than 25 years and contains detailed guarantees of economic and social rights that have been defined through the work of the Committee of Independent Experts. The Charter's supervisory procedure provides for input from independent experts, non-governmental organizations and government representatives. The European experience with this kind of supervisory mechanism may be useful in determining how a Canadian social charter might be appropriately enforced.

B. THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

The Community Charter is a recent creation of the European Community. The European Community is an economic union of 12 European states the purpose of which, among other things, is to harmonize the economic policies of member states and to raise the standard of living of Community citizens. Its members are Germany, France, Italy, Belgium, Luxembourg, the Netherlands, the United Kingdom, Denmark, the Republic of Ireland, Greece, Spain and Portugal.

The Community Charter was developed primarily as a social policy counterpart to the recent process of European integration and trade liberalization. Its proponents argued that it was essential to enshrine certain social and economic standards that might otherwise be eroded through "social dumping" under European deregulation. The Charter was adopted as a "solemn declaration" by the member states of the European Community (with the dissent of the United Kingdom) in December 1989. Its guarantees relate primarily to

the rights of workers in the European Community. Because of its status as a declaration rather than a treaty, the Charter is not regarded as binding Community law.

The rights protected under the Charter include the right to freedom of movement between member states, free choice of employment, fair remuneration and a decent standard of living, the right to a weekly rest period and annual paid vacation, the right to social security and the rights of freedom of association, collective bargaining and a qualified right to strike. The Charter states that the process of European integration must lead to the improvement of living and working conditions of workers and the harmonization of labour standards law in the member states.

In addition, the Charter calls for the assurance of equal treatment for men and women, requires companies to provide for the consultation and participation of workers in certain company decisions, guarantees satisfactory health and safety requirements, and provides for minimum age requirements, fair remuneration and vocational training for adolescent workers. The Charter also guarantees the rights of elderly persons to a decent standard of living and to social and medical assistance if needed. Finally, it requires governments to take concrete measures to improve the social and professional integration of disabled persons.

Legislative authority within the European Community is divided between the Community and the member states, and the plans for implementation of the Community Charter follow from this division of powers. For areas within the competence of the European Community, the European Commission has drawn up an action programme for the implementation of the Charter. For those areas within the competence of the member states of the Community but which arise in similar terms in all countries, the Commission has promised non-binding measures to encourage uniform standards.

The European Commission has proposed more than 50 measures to implement the rights protected under the Community Charter. For example, to fulfil the duty to improve living and working conditions, the Commission has proposed a directive on the adaptation

of working time and essential working conditions, a directive governing employment contracts, a directive setting out procedures for information and consultation of workers before there are mass lay-offs, and a memorandum on the social integration and provision of education and housing to migrant workers. With regard to the right to social protection, the Commission plans to implement a recommendation on uniform objectives for member states and a recommendation setting out common criteria for the guarantee of sufficient resources and social assistance for the least advantaged citizens. The Council of Ministers, the Community's primary legislative body, is expected to pronounce on these proposals within the next year.

C. THE INTER-AMERICAN CONVENTIONS

The Organization of American States (OAS), made up of the countries of North and South America, including Canada, has produced a number of declarations and conventions that allow for some protection of economic and social rights. The OAS members have created an Inter-American system of regional organizations and agencies, including an Inter-American Commission on Human Rights that can hear individual petitions and an Inter-American Court of Human Rights that can hear cases brought by states and by the Commission.

In 1948, the member states adopted the American Declaration of the Rights and Duties of Man. This declaration guarantees civil and political as well as economic and social rights. The social and economic rights its protects include rights to health care and social measures relating to food, clothing, housing and medical care, the right to an education, the right to take part in the cultural life of the community, the right to work and to a reasonable standard of living, the right to leisure time, the right to social security and "the right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home". Although the Declaration is not meant to be legally binding, the Commission has applied the rights contained in the Declaration in hearing individual petitions against OAS member states.

In some cases, the Commission has found violations of certain of the economic and social rights contained in the Declaration.

The OAS member states have also adopted the American Convention on Human Rights, which was signed in 1969, came into force in 1978 and has been ratified by 22 countries (which do not include Canada). The Convention bears a general resemblance to the European Convention on Human Rights and is concerned primarily with civil and political rights.

In 1988, fourteen OAS members signed the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the San Salvador Protocol. As of January 1991, this Protocol had only been ratified by Surinam.

The Protocol protects workers' rights, including the right to work, the right to just, equitable and satisfactory conditions of work, the right to safety and hygiene at work and trade union rights to organize and to strike, subject to limitations. The Protocol also protects the right to social security, to health, to a healthy environment, to food, to education, to the benefits of culture and to the formation and protection of families. Finally, the Protocol contains specific provisions relating to the rights of children, the protection of the elderly and the protection of the handicapped.

The Protocol obliges states to adopt the necessary measures, to the extent possible given their degree of development, to achieve progressively the rights guaranteed in the Protocol. It also requires states to enact "such legislative or other measures as may be necessary for making those rights a reality".

With respect to enforcement, the Protocol provides for a system of periodic reporting and supervision involving a number of the intergovernmental organizations and specialized agencies established under the Inter-American system. In addition, the Protocol contains special provisions to enforce the trade union and educational rights,

which include the right to free primary education and an obligation to progressively introduce free secondary and post-secondary education. When a state party violates either of these provisions, it can be brought before the Inter-American Commission on Human Rights (by individual petition) or the Inter-American Court of Human Rights under the system used to protect the civil and political rights guaranteed under the American Convention on Human Rights.

D. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter is a product of the Organization of African Unity. It was signed in 1981 and entered into force in 1986. The social and economic guarantees it contains include the right of peoples to economic, social and cultural development, to national peace and international security, and to a general satisfactory environment favourable to their development, the right to enjoy the best attainable state of physical and mental health and the right to education.

E. SUMMARY

European states have made significant efforts to protect economic and social rights by means of regional treaties. The European Social Charter, adopted by the Council of Europe, has been in effect for more than 25 years and contains detailed guarantees of economic and social rights that have been defined through the work of the Committee of Independent Experts. The Charter is enforced not by a central court but by a mechanism of reporting and supervision that involves independent experts, government representatives and non-governmental organizations. The Community Charter of Fundamental Social Rights of Workers was adopted by the member states of the European Community in 1989. Although the Charter is only a declaration that does not constitute binding Community law, the European Commission has already developed a number of proposals to facilitate its implementation by both the Community and the member states.

The San Salvador Protocol of the Organization of American States may yet prove to be an effective regional instrument for protecting economic and social rights, particularly since it provides for the adjudication of trade union rights and rights to education. But it appears unlikely that the Protocol will receive enough ratifications to come into force for some time. Meanwhile, however, the Inter-American Commission on Human Rights has shown that it is willing to consider individual complaints against OAS member states that concern violations of the Declaration of the Rights and Duties of Man, including infringements of the economic and social rights contained in that document. The Commission's proceedings may prove to be a useful forum for testing the justiciability of economic and social rights guarantees.

IV. INTERNATIONAL CONVENTIONS

A. INTRODUCTION

International instruments such as Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Conventions of the International Labour Organizations were among the first and most comprehensive expressions of social and economic rights. They have served as important models for the entrenchment of these rights in regional conventions and national constitutions.

B. THE SOURCES AND CONTENT OF ECONOMIC AND SOCIAL RIGHTS PROTECTED UNDER INTERNATIONAL LAW

1. The Charter of the United Nations

The U.N. Charter makes it a duty for the United Nations to "promote ... higher standards of living, full employment and conditions of economic and social progress and development". In addition, "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth".

2. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations in 1948, with Canada's support. The Declaration is not a legally binding instrument, but its provisions have had an important indirect effect in the development of the international law of human rights and are regarded by some commentators as customary international law.

The Declaration ensures the rights of everyone to social security and to the realization of "the economic, social and cultural rights indispensable for his dignity and the free development of his personality." It refers to the right to work, to free choice of

employment, to just and favourable working conditions, to equal pay for equal work, to just and favourable remuneration and to form trade unions. The Declaration also protects the right to rest and leisure, to education, to participate in cultural life, and to an adequate standard of living including food, clothing, housing and health and welfare provisions.

3. The International Covenant on Social, Economic and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights is the most influential and comprehensive international document in the area of social and economic rights. As discussed in the first part of this paper, the Covenant grew out of the United Nations' work on the Universal Declaration and was formulated as a counterpart to the International Covenant on Civil and Political Rights. Unlike the Declaration, the Covenant is a treaty and as such is both part of international law as well as legally enforceable under the national law of a number of countries. The Covenant was signed in 1966 and entered into force in 1976. Canada is one of 97 states that have ratified the Covenant.

The Covenant guarantees a comprehensive range of economic and social rights. These include:

- the right to work, including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts;
- the right to just and favourable conditions of work, including fair remuneration, safe and health working conditions, equal opportunity for promotion, as well as reasonable working hours and paid holidays;
- the right of unions to organize, subject to laws necessary for national security or public order or for the protections of the rights and freedoms of others, and the right to strike, provided it is exercised in conformity with the laws of the particular country;
- the right to social security;
- the need for the protection of the family, mothers (including the right to maternity leave) and young persons;

- the right to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions;
- the right to the highest attainable standard of physical and mental health, which includes the improvement of environmental and industrial hygiene and the creation of services ensuring to all medical services and attention in the event of sickness;
- the right to education, including compulsory and free primary education, generally- available secondary education and higher education equally accessible to all, on the basis of capacity; and
- the right to take part in cultural life.

The implementation of the Covenant is based on the principle of "progressive realization". State parties undertake to take steps, within the resources available, to progressively achieve full realization of the rights by all appropriate means. This is in contrast to the Covenant on Civil and Political Rights, which provides a so-called immediate obligation "to respect and to ensure" the rights in the Covenant.

4. United Nations General Assembly Declarations and Resolutions

In addition to the Universal Declaration of Human Rights, the United Nations has made a number of other Declarations over the past few decades concerning rights that are closely related to the social, economic and cultural rights protected in the Covenant on Social, Economic and Cultural Rights. These include the right to economic development, the right to a clean and healthy environment and the right to share in the common heritage of mankind, among others. These and other rights can be found in the following General Assembly Declarations: The Right to Development as a Human Right; Social Progress and Development; Declaration on the Elimination of Discrimination Against Women; Declaration and Programme of Action on the Establishment of a New International Economic Order; the Charter of Economic Rights and Duties of States; and the Declaration on Social Progress and Development, among others.

5. United Nations Specialized Agencies

Within the United Nations, there are permanent institutions concerned with the formulation of standards in the field of economic, social and cultural rights. These institutions include:

- the International Labour Organization (ILO),
- the Food and Agriculture Organization (FAO),
- the United Nations Educational, Scientific, and Cultural Organization (UNESCO); and
- the World Health Organization (WHO).

(a) The International Labour Organization (ILO)

The International Labour Organization is primarily concerned with the right to work and to social security. In addition, it deals with certain aspects of the right to an adequate standard of living, to family protection and to education. The ILO sets these standards by way of binding international conventions and by recommendations. During the 72 years of its existence, the ILO has adopted almost 170 Conventions on subjects such as freedom of association, forced labour, equality of opportunity, labour relations, conditions of work, social security, the employment of women and young persons, migrant workers and indigenous workers and tribal populations. Canada has ratified surprisingly few of these Conventions, since they involve the field of labour law and therefore require provincial agreement for implementation.

(b) The Food and Agriculture Organization (FAO)

The FAO is primarily concerned with the implementation of the right to adequate food through the granting of food aid, the formulation of agricultural targets, and in making recommendations for state and international action in periods of chronic food shortages. However, it is also involved in the formulation of standards. By compiling

statistics and indicators of world hunger, the FAO has helped to define the meaning of the right to "adequate food" as protected in the Covenant on Social, Economic and Cultural Rights.

(c) United Nations Educational, Scientific and Cultural Organization (UNESCO)

The General Conference of UNESCO is the organ competent to adopt formal conventions and recommendations. It has established certain social and economic standards through instruments such as Convention against Discrimination in Education, the Recommendation concerning Technical and Vocational Education, and the Recommendation concerning the Status of Teachers. In addition, it has protected cultural rights by means of the Convention for the Protection of Cultural Property in the event of Armed Conflict and the Recommendation on the Means of Prohibiting the Illicit Export of Cultural Property.

(d) The World Health Organization (WHO)

The objective of the WHO is the attainment by all peoples of the highest level of health. Much like the FAO, the WHO is not charged with the elaboration of international laws creating binding obligations but with the implementation and promotion of the right to health. However, it establishes minimum standards for environmental health, public health services and social security as they relate to health and compiles statistics that help to define the minimum obligation for fulfilling the right to health.

C. MECHANISMS FOR ENFORCEMENT OF INTERNATIONAL NORMS

International human rights are generally enforced and implemented by persuasion rather than coercion. The international legal system lacks the mechanisms to ensure compliance with international norms. There is no international police force and no international court that can take jurisdiction over a state without its consent. However, international bodies have created a number of supervisory mechanisms to assess whether or not a state has fulfilled its obligations -- in effect, to formalize this persuasive process.

This is generally done by means of two mechanisms: (1) complaint by a state or an individual to a reviewing body; or (2) reporting by each state and supervision by a reviewing body.

1. Individual or State Complaint Procedures

(a) The International Covenant on Civil and Political Rights

The Covenant on Economic, Social and Cultural Rights, unlike the Covenant on Political and Civil Rights, does not contain a procedure that allows states or individuals to complain to a reviewing body. However, the Human Rights Committee, which studies reports and hears complaints under the Covenant on Civil and Political Rights, has indicated that social and economic rights may be indirectly protected as civil and political rights. For example, the Committee in deciding two cases from the Netherlands, held that excluding a person from social security benefits was a violation of their right to equality under the Covenant and that the state had a duty to provide a remedy. Similarly, in a General Comment, the Committee gave some indication that to protect the right to life under the Covenant, a state could be required to adopt positive measures, such as measures to reduce infant mortality or to eliminate malnutrition.

(b) The International Labour Organization (ILO)

The ILO is one of the few international organizations that uses a relatively well-developed procedure of complaints to a quasi-judicial body. Once a state has ratified a Convention, complaints can be brought against it by other ratifying countries or by workers' or employers' groups.

Where a complaint that a state has failed to comply with a convention is made by workers' or employers' groups, the ILO may inform the state concerned and publish the complaint, the states' reply and the ILO's own findings on the matter.

Where a complaint is filed by one government against another, the ILO may refer the complaint to a Commission of Inquiry, composed of eminent jurists from a number of countries. If the recommendations of the Commission of Inquiry are not accepted by the states before it, the matter may be brought before the International Court of Justice. If the state against which the complaint has been made fails to comply with the recommendations of the Commission or the International Court, the International Labour Organization has the power to recommend "such action as it may deem wise and expedient to secure compliance." Although a member state can be expelled from the Organization as a result of violations of their convention obligations, this has yet to happen.

Another complaints procedure, the Freedom of Association Complaints Procedure, exists under an agreement between the International Labour Organization and the Economic and Social Council of the United Nations. This procedure can be used against a state regardless of whether it has ratified the Freedom of Association Conventions of the ILO. A complaint regarding alleged violations of freedom of association can be lodged by either another state or by national or international workers' or employers' organizations. The complaints are examined by the Committee on Freedom of Association which makes recommendations. If the case is not resolved at this stage, the governing body of the International Labour Organization may appoint a Conciliation Commission, which is a commission of inquiry following the same procedure as the Commission of Inquiry in the case of a general complaint.

These complaint procedures also allow the decision-making body to carry out an inquiry by way of "direct contact". In cases of prolonged controversy, a direct contact mission can be sent to a country with the agreement of the government, where it may hold discussions with representatives of governments, employers' and workers' organizations, advisory bodies, the civil service, and other non-governmental bodies to get a clearer idea of the problems. This system of direct contacts works within the complaints procedures as well as the reporting procedures (see below). There is also a system of advisory missions, which perform essentially the same function as contact missions, but are less formalized.

(c) The United Nations Educational, Scientific and Cultural Organization (UNESCO)

The UNESCO Convention provides that any dispute between parties concerning the interpretation or application of the Convention that cannot be settled by negotiation may, on request, be sent to the International Court of Justice for an advisory opinion. More specific machinery is provided by a Protocol instituting a Conciliation and Good Offices Commission which is responsible for seeking a settlement of any disputes arising under the Convention against Discrimination in Education. The Commission, after ascertaining the facts and attempting to bring about a settlement, must draw up a report with recommendations and submit it to the General Conference. It may recommend that a matter be brought before the International Court of Justice for an advisory opinion.

2. State Reporting Procedures

(a) The International Covenant on Economic, Social and Cultural Rights

Under the International Covenant on Economic Social and Cultural Rights, states are required to report on the programmes and laws they have adopted and the progress made in protecting the rights recognized in the Covenant.

United Nations guidelines for the preparation of such reports suggest that governments should describe the basic conditions prevailing in their countries as well as the basic programmes and institutions, principal laws, administrative regulations and collective agreements designed to promote particular economic, social and cultural rights, as well as any relevant court decisions. The result is that state reports, where they follow the guidelines, have emphasized relevant constitutional provisions or legislation but seldom refer to the practical effects of such legislation. In contrast to the International Labour Organization procedures, the Covenant does not provide for the participation of non-governmental organizations.

States seldom provide statistical information or acknowledge problems of homelessness, malnutrition or poverty. However, the state reports are supplemented by general reports from the United Nations specialized agencies (the ILO, FAO, WHO and UNESCO, as discussed above) which rely in large part on statistical information.

The procedure for assessment of reports is complex. The Covenant provides that:

- reports are submitted to the United Nations Secretary General;
- the Secretary General transmits the reports to the Economic and Social Council and relevant parts of the reports to the specialized agencies;
- the Council refers both state and agency reports to the Commission on Human Rights, a United Nations central body dealing with all human rights issues, for study and general recommendation or for information;
- the Commission's recommendations may be commented upon by the agencies and states;
- the Council reports to the United Nations General Assembly with recommendations of a general nature and a summary of information from states and specialized agencies.

This system of reporting and review was never properly implemented, in large part because the Working Group of Experts advising the Economic and Social Council was politicized and ineffective. This group has now been replaced by an Expert Committee on Economic, Social and Cultural Rights, created in 1986. It resembles in several respects the Committee on Human Rights established under the Covenant on Civil and Political Rights. In its first four years of operation, the new Committee has emphasized that one of its primary functions -- like that of the Expert Committee under the European Social Charter -- is to clarify the core obligations of states that flow from the rights as defined in a general matter in the Covenant. The Committee has also recently agreed to study the feasibility of the adoption of a protocol that would allow for complaints to be brought by individuals to the committee.

(b) The International Labour Organization

In addition to its complaint procedures, the ILO relies on a relatively sophisticated system of reporting and supervision. The ILO Committee of Experts on the Application of Conventions and Recommendations receives over a thousand detailed state reports per year. From an examination of these reports, as well as from information on the laws and regulations of the state in question and other material such as comments on the government reports by employers' organizations and trade unions, the Committee assesses whether a state is complying with its obligations under the ILO Conventions. Unlike the International Covenant on Economic, Social and Cultural Rights, non-governmental organizations are actively involved in the reporting procedure of the ILO. Copies of the national reports on the application of Conventions are sent to the representative national workers' and employers' organisations which are invited to send their comments.

The Experts Committee's final reports are sent to a Conference Committee on the Application of Conventions and Recommendations. The Committee has the power, at its annual meeting, to invite governments to provide explanations for discrepancies noted in the report of the Experts Committee and to report on measures taken to remedy such discrepancies. The Conference Committee also has the power to send contact missions to the state under investigation to speak to all the relevant parties, including workers' and employers' organizations. The discussions and conclusions of the Conference Committee are summarised and then submitted to the General Conference, the ILO's "legislative body".

(c) The United Nations Educational, Scientific and Cultural Organization (UNESCO)

The Convention of the United Nations Educational, Scientific and Cultural Organization also has a procedure requiring states to report periodically on the measures they have taken to comply with UNESCO conventions and recommendations.

D. SUMMARY

Since 1919, when the International Labour Organization was established under the framework of the League of Nations, the international community has taken a leading role in defining and entrenching social and economic rights in international conventions. These rights have been set out comprehensively in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the many conventions of the International Labour Organization. These provisions, like all international legal instruments, have moral rather than coercive force. But international organizations, particularly the International Labour Organization, have made significant progress in establishing mechanisms to interpret social and economic rights and monitor state compliance with the relevant international treaties.

V. CONCLUSIONS

This paper has reviewed the ways in which social and economic rights are protected in national constitutions and under regional and international treaties. We have not attempted to gauge the extent to which social, economic and cultural rights have been realized in fact in the countries and regions concerned. In addition, we have not tried to investigate the programmes and fiscal arrangements that have been put in place either nationally or regionally to implement these rights.

But despite these limitations in the scope of the paper, our research has identified a number of points worth highlighting here.

1. The Extent of the Protection of Social and Economic Rights in National Constitutions

Social and economic rights are protected in a surprisingly large number of countries throughout the world. These include countries from all continents and from both the developed and developing worlds. Our survey of national constitutions indicated that over one-half of the countries of the world protected social and economic rights. This survey did not include many of the states that were formerly part of the Soviet bloc, countries that have traditionally emphasized the pre-eminence of social and economic rights over civil and political rights. We also found that more than twenty of the U.S. states include provisions relating to the care of the needy or the protection of the health of the people in their state constitutions.

Although the nature of the rights protected varies according to the historical traditions and socio-political characteristics of each country, there are certain matters that appear most commonly as the subject of constitutional rights and principles. These include social assistance, a minimum standard of living, health care, housing, workers' rights, education, the environment, culture, and protection of the family. These statistics bring

home the fact that the entrenchment of social and economic rights or principles in a constitution is not by any means a novel idea.

2. The Varying Levels of Obligation and Enforceability Among National Constitutions Protect Economic and Social Rights

Our survey demonstrates that protections of social and economic rights take many forms and can impose varying levels of obligation and enforceability. In some countries and with respect to some rights, the protection stems from a general preambular statement or a detailed but expressly non-justiciable statement of principles. In other cases, the protections are phrased in terms that impose a mandatory duty on the government. In many constitutions, this duty is abstract and general. Others, however, impose specific duties to provide free medical assistance or to devote a certain proportion of the government's budget to a particular programme. Many states will combine certain specific and presumably justiciable guarantees -- for example, to free education at the primary level -- with other provisions that take the form of guiding principles.

The richness and variety of these forms of protecting social and economic rights suggests that Canadians have available a variety of options to entrench social and economic rights or principles in their Constitution. In the context of the Canadian federal system, the judicious use of one or more of these means of entrenchment might provide a means of preserving essential national social programmes while enabling local governments to innovate to suit their needs.

3. The Use of Expert and Governmental Bodies to Monitor the Protection of Economic and Social Rights

Although we know little about how social and economic protections are enforced at the national level, the mechanisms used at the regional and international levels provide an interesting example as to how the protection of economic and social rights may be monitored and enforced. The provisions of both the European Social Charter and the International Covenant on Economic, Social and Cultural Rights establish a bi-level

structure of reporting and supervision. These monitoring structures allow for input from a independent experts, government representatives and -- in the case of the European Social Charter -- non-governmental organizations.

As Canadians explore alternative means to ensure that our national social programmes are maintained in the years to come, it may be helpful to look to these and other models as examples. The creation of a monitoring agency with powers to recommend and report rather than to enforce may provide a useful means to avoid problems of "justiciability" but to ensure that the provisions of a social charter become a guiding instrument for the evolution of Canadian social and economic policy.

4. Procedures that allow for the gradual harmonization of standards

The provisions of the European Social Charter enable national governments to "opt in" to various social and economic rights protections at different speeds. All signatories must agree to adhere to at least five of seven essential rights as well as at least five other rights. Although it is crucial to preserve national standards in Canadian social programmes and to maintain the fiscal arrangements that support those programmes, the European experience may provide an interesting model for the gradual implementation of certain rights or principles.

5. The Necessity for Public Participation in Protecting Social and Economic Rights

The European Social Charter enables non-governmental organizations -- workers' and employers' groups -- to play a formal part in evaluating compliance with economic and social protections. At the international level, non-governmental organizations play a crucial role in monitoring the protection of civil and political rights. Commentators have called for greater participation by these groups in monitoring compliance with economic and social rights.

These examples suggest that it is important to involve the public directly in the ongoing implementation of a Canadian social charter. A social charter can be a vibrant expression of the commitment of Canadians to fairness and social justice that serves as a focus of public debate and a venue for the participation of individuals and non-governmental groups.

APPENDIX A

A SAMPLE OF OECD-MEMBER STATE CONSTITUTIONS THAT ENTRENCH SOCIAL AND ECONOMIC RIGHTS OR PRINCIPLES
(listed by country)

BELGIUM

Education: "Education is free;" (Art. 17(1))

DENMARK

Social Assistance: "Any person unable to support himself or his dependants shall, where no other person else is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect." (Art. 75(2)

Employment: "In order to advance the public weal, efforts shall be made to afford work to every able-bodied citizen on terms that will secure his existence." (Art. 75(1))

Education: "All children of school age shall be entitled to free instruction in the elementary schools." (Art. 76)

GERMANY

Social Assistance: "Every mother shall be entitled to the protection and care of the community." (Art. 6(4))

Education: The German courts have interpreted Article 12(1), which guarantees that "[a]ll Germans shall have the right freely to choose ... their place of training," to impose a duty on the State to provide schooling.

GREECE

Social Assistance: "The state shall care for the social security of the working people, as specified by law." (Art. 22(4))

"Families with many children, persons disabled in war and peacetime victims, war widows and orphans, as well as persons suffering from incurable bodily or mental disease are entitled to the special care of the State." (Art. 21(2))

Health: "The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disabled, and for relief of the needy." (Art. 21(3))

Housing: "The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care." (Art. 21(4))

Employment: Articles 22 and 23 declare that "work constitutes a right" and contain many provisions with respect to employment law. These provisions guarantee pay equity, provide for working conditions to be established by law and through collective bargaining, prohibit compulsory work and guarantee the right to strike with certain exceptions.

Education: "All Greeks are entitled to free education on all levels at state educational institutions." (Art. 16(4))

Environment: "Protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment... " (Art. 24)

IRELAND

Social Assistance and Employment: Art. 45 sets out a number of "directive principles of social policy" intended to guide the legislature and not to be adjudicated by the courts. These principles provide, among other things, that the state should: promote the welfare of the whole people by securing a social order of justice and charity; ensure that all citizens, through their occupations, have the means to provide for their domestic needs; provide for distribution of natural resource ownership and control within the community; restrict corporate concentration; and safeguard the interests of weak and impoverished individuals.

Education: "The State shall provide for free primary education." (Art. 42(4)) (this provision is not one of the directive principles; it appears, therefore to be a binding guarantee).

ITALY

Social Assistance: "Every private citizen unable to work and unprovided with the resources necessary for existence is entitled to private and social assistance. Workers are entitled to adequate insurance for their requirements in case of accidents, illness, disability, old age, and

involuntary unemployment. The disabled and persons incapable of employment are entitled to educational and vocational training." (Art. 38)

Health: "The Republic provides health safeguards as a basic right of the individual and in the interests of the Community, and grants medical assistance to indigent free of charge." (Art. 32)

Employment: Art. 4 recognizes "the right of all citizens to work and promotes such conditions as will make this right effective." Arts. 35 to 40 provide for training, fair wages, the establishment by law of maximum hours, holidays, the protection of female workers and freedom to organize trade unions and to strike.

Education: "Elementary education, imparted for at least eight years, is compulsory and free."

JAPAN

Social Assistance: "All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health." (Art. 25)

Employment: "All people shall have the right and obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law." (Art. 27);

"The right of workers to organize and to bargain and act collectively is guaranteed." (Art. 28)

Education: "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free." (Art. 26)

NETHERLANDS

Social Assistance: "It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve distribution of wealth." (Art. 20(1))

"Rules concerning entitlement to social security shall be laid down by Act of Parliament." (Art. 20(2))

"Dutch nationals resident in the Netherlands who are unable to provide for themselves have the right, to be regulated by Act of Parliament, to aid from the authorities." (Art. 20(3))

Health: "The authorities shall take steps to promote the health of the population." (Art. 22(1))

Housing: "It shall be the concern of the authorities to provide sufficient living accommodation." (Art. 22(2))

Employment: "It shall be the concern of the authorities to promote the provision of sufficient employment. (Art. 19(1))

Rules concerning the legal status and protection of working persons and concerning co-determination shall be laid down by Act of Parliament."(Art.19(2))

"The right of every Dutch national to a free choice of work shall be recognized, without prejudice to restrictions laid down by or pursuant to an Act of Parliament." (Art. 19(3))

Environment: "It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment." (Art. 21)

Culture: "The authorities shall promote social and cultural development and leisure activities." (Art. 22(3))

PORTUGAL

Express provision regarding justiciability: The Portuguese Constitution sets out "Rights, Freedoms and Safeguards" and "Economic, Social and Cultural Rights and Duties" in different sections. With the exception of certain workers' rights, all social and economic rights are contained in the second section. Article 18 specifies that the "Rights, Freedoms and Safeguards" protections are directly applicable and binding. This provision suggests that "Economic, Social and Cultural Rights and Duties" are not justiciable. However, Article 283 gives the Constitutional Court authority to "judge and verify" whether the State has "omitted" to carry out one of its constitutional duties.

Social Assistance: Article 63 declares that everyone is entitled to social security, provides that it is a duty of the State to organize and co-ordinate a decentralized system of social security, and specifies that this social security system

must protect citizens in sickness, old age, disability, widowhood, orphancy, unemployment and all other situations in which the means of subsistence or capacity to work are lost or reduced.

Health: Article 64 states that everyone has the right to health protection and requires the establishment of a universal, general and free national health service as well as conditions for the development and improvement of the health of the people.

Housing: Article 65 guarantees everyone a right to housing of adequate size satisfying standards of hygiene and comfort and preserving personal privacy. It requires the state to put into effect a housing policy and undertake specified initiatives to achieve this right.

Employment: Articles 53 to 58 (which are declared to be legally enforceable) guarantee rights to job security, trade union organization, collective bargaining and the right to strike. Articles 59 to 60 (which are not specified as justiciable) provide that everyone has a right to work, requires the State to implement full employment policies and provide adequate training and guarantees rights to fair remuneration, safe and healthy working conditions, rest and recreation and unemployment insurance.

Environment: Article 66 guarantees everyone "the right to an ecologically balanced human environment" and requires the State to prevent pollution, preserve national parks, promote renewable natural resources etc.

Education and Culture: Article 73 guarantees the right to education and culture and requires the State to promote the democratization of education and culture. Article 74 requires the State to provide free universal basic education and to take various measures to abolish illiteracy and provide free education at all levels. Article 78 requires the State to "preserve, defend and enhance the cultural heritage of the Portuguese people."

SPAIN

Express provision regarding justiciability: The Spanish Constitution sets out "Rights and Freedoms" and "Guiding Principles of Economic and Social Policy" in separate sections. Article 53 specifies that the rights in the first section are justiciable while those contained in the second section "shall guide positive legislation, judicial procedure and the public authorities." The right to education is the only social right contained in the first section.

Social Assistance:	"The public authorities shall maintain a public system of social security for all citizens which will guarantee social assistance and services which are sufficient in cases of need, especially unemployment." (Art. 41)
Health:	"The right to health protection is recognized." (Art. 43(1))
	"It is incumbent upon the public authorities to organize and watch over public health and hygiene through preventive measures and through necessary care and services." (Art. 43(2))
Housing:	"All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, ..." (Art. 47)
Employment:	"All Spaniards have the duty to work and the right to work ..." (Art. 35(1))
	"The law shall regulate a statute for workers." (Art. 37(1))
	"The law shall guarantee the right to collective labour negotiations." (Art. 37(1))
	"The public authorities shall promote favourable conditions for social and economic progress and a more equitable distribution of income ... Special emphasis will be placed on the realization a policy aimed at full employment." (Art. 40)
	"The public authorities shall promote a policy which guarantees professional training and readaptation; ... work safety; ... rest (etc.) (Art. 40(2))
Education:	"Everyone has the right to education" (Art. 27(1))
	"Basic education is obligatory and free." (Art. 27(4))
Environment:	"Everyone has the right to enjoy an environment suitable for development of the person as well as the duty to preserve it." (Art. 45)
	"The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment." (Art. 45(2))
Culture:	"The public authorities shall promote and watch over access to culture, to which all have a right." (Art. 44)

SWITZERLAND

Social Insurance: The federal government shall institute illness and accidents insurance (Art. 34 bis1), unemployment insurance (Art. 34 ter 3), old age and survivor's insurance (Art. 34 quater 1) and maternity insurance (Art. 34 quinquies 4).

Education: "The Cantons shall provide for adequate primary education which shall be placed wholly under State control Such education shall be compulsory and, in public schools, free of charge." (Art. 27(2))

Environment: "The Confederation shall, in carrying out its obligations, preserve the characteristic aspects of landscapes and localities of historical sites as well as of natural and cultural monuments, and it shall leave them untouched whenever general interest is dominant." (Art. 24 sexies 2)

TURKEY

Social Assistance: "Everyone has a right to social security. The State shall take necessary measures and establish organizations for the provisions of social security." (Art. 60)

Health: "[T]he State shall regulate health services... general health insurance may be introduced by law." (Art. 56)

Housing: "The State shall take measures to meet the need for housing." " (Art. 57)

Employment: "Everyone has the right and duty to work. The State shall take the necessary measures to raise the standard of living or workers to protect them in order to improve the general conditions of labour, and to create suitable economic conditions for the prevention of unemployment." (Art. 49); Articles 50 to 55 guarantee minimum working conditions, the right to organize labour unions to collective bargaining and to safeguard the provision of fair wages.

Education: "No-one shall be deprived of the right to learning and education... Primary education is compulsory and free." (Art. 42)

Environment: "Everyone has the right to live in a healthy, balanced environment. It is the duty of the State to improve the natural environment, and to prevent environmental pollution." (Art. 56)

Culture: "The State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supporting and promoting measures towards this end." (Art. 63)

APPENDIX B

A SAMPLE OF OECD-MEMBER STATE CONSTITUTIONS THAT ENTRENCH SOCIAL AND ECONOMIC RIGHTS OR PRINCIPLES
(listed by subject matter)

SOCIAL ASSISTANCE

Denmark: "Any person unable to support himself or his dependants shall, where no other person else is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by Statute in such respect." (Art. 75(2)

Germany: "Every mother shall be entitled to the protection and care of the community." (Art. 6(4))

Greece: "The state shall care for the social security of the working people, as specified by law." (Art. 22(4))

Ireland: Art. 45 sets out a number of "directive principles of social policy" intended to guide the legislature and not to be adjudicated by the courts. These principles provide, among other things, that the state should: promote the welfare of the whole people by securing a social order of justice and charity; ensure that all citizens, through their occupations, have the means to provide for their domestic needs; provide for distribution of natural resource ownership and control within the community; restrict corporate concentration; and safeguard the interests of weak and impoverished individuals.

Italy: "Every private citizen unable to work and unprovided with the resources necessary for existence is entitled to private and social assistance. Workers are entitled to adequate insurance for their requirements in case of accidents, illness, disability, old age, and involuntary unemployment. The disabled and persons incapable of employment are entitled to educational and vocational training." (Art. 38)

Japan: "All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health." (Art. 25)

Netherlands: "It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve distribution of wealth." (Art. 20(1))

Portugal: "It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment." (Art. 21)

Spain: "The public authorities shall maintain a public system of social security for all citizens which will guarantee social assistance and services which are sufficient in cases of need, especially unemployment." (Art. 41)

Switzerland: The federal government shall institute illness and accidents insurance (Art. 34 bis1), unemployment insurance (Art. 34 ter 3), old age and survivor's insurance (Art. 34 quater 1) and maternity insurance (Art. 34 quinquies 4).

Turkey: "Everyone has a right to social security. The State shall take necessary measures and establish organizations for the provisions of social security." (Art. 60)

HEALTH

Greece: "The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disabled, and for relief of the needy." (Art. 21(3))

Italy: "The Republic provides health safeguards as a basic right of the individual and in the interests of the Community, and grants medical assistance to indigent free of charge." (Art. 32)

Netherlands: "The authorities shall take steps to promote the health of the population." (Art. 22(1))

Portugal: Article 64 states that everyone has the right to health protection and requires the establishment of a universal, general and free national health service as well as conditions for the development and improvement of the health of the people.

Spain: "The right to health protection is recognized." (Art. 43(1))

"It is incumbent upon the public authorities to organize and watch over public health and hygiene through preventive measures and through necessary care and services." (Art. 43(2))

Turkey: "[T]he State shall regulate health services... general health insurance may be introduced by law." (Art. 56)

HOUSING

Greece: "The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care." (Art. 21(4))

Netherlands: "It shall be the concern of the authorities to provide sufficient living accommodation." (Art. 22(2))

Portugal: Article 65 guarantees everyone a right to housing of adequate size satisfying standards of hygiene and comfort and preserving personal privacy. It requires the state to put into effect a housing policy and undertake specified initiatives to achieve this right.

Spain: "All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, ..." (Art. 47)

Turkey: "The State shall take measures to meet the need for housing." " (Art. 57)

EMPLOYMENT

Denmark: "In order to advance the public weal, efforts shall be made to afford work to every able-bodied citizen on terms that will secure his existence." (Art. 75(1))

Greece: Articles 22 and 23 declare that "work constitutes a right" and contain many provisions with respect to employment law. These provisions guarantee pay equity, provide for working conditions to be established by law and through collective bargaining, prohibit compulsory work and guarantee the right to strike with certain exceptions.

Ireland: Art. 45 sets out a number of "directive principles of social policy" intended to guide the legislature and not to be adjudicated by the courts. These principles provide, among other things, that the state should: promote the welfare of the whole people by securing a social order of justice and charity; ensure that all citizens, through their occupations, have the means to provide for their domestic needs; provide for distribution of natural resource ownership and control within the community; restrict corporate concentration; and safeguard the interests of weak and impoverished individuals.

Italy: Art. 4 recognizes "the right of all citizens to work and promotes such conditions as will make this right effective." Arts. 35 to 40 provide for training, fair wages, the establishment by law of maximum hours, holidays, the protection of female workers and freedom to organize trade unions and to strike.

Japan: "All people shall have the right and obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law." (Art. 27);

Netherlands: "It shall be the concern of the authorities to promote the provision of sufficient employment. (Art. 19(1))

Rules concerning the legal status and protection of working persons and concerning co-determination shall be laid down by Act of Parliament."(Art.19(2))

"The right of every Dutch national to a free choice of work shall be recognized, without prejudice to restrictions laid down by or pursuant to an Act of Parliament." (Art. 19(3))

Portugal: Articles 53 to 58 (which are declared to be legally enforceable) guarantee rights to job security, trade union organization, collective bargaining and the right to strike. Articles 59 to 60 (which are not specified as justiciable) provide that everyone has a right to work, requires the State to implement full employment policies and provide adequate training and guarantees rights to fair remuneration, safe and healthy working conditions, rest and recreation and unemployment insurance.

Spain: "All Spaniards have the duty to work and the right to work ..." (Art. 35(1))

Turkey: "Everyone has the right and duty to work. The State shall take the necessary measures to raise the standard of living or workers to protect them in order to improve the general conditions of labour, and to create suitable economic conditions for the prevention of unemployment." (Art. 49); Articles 50 to 55 guarantee minimum working conditions, the right to organize labour unions to collective bargaining and to safeguard the provision of fair wages.

EDUCATION

Belgium: "Education is free;" (Art. 17(1))

Denmark: "All children of school age shall be entitled to free instruction in the elementary schools." (Art. 76)

Germany: The German courts have interpreted Article 12(1), which guarantees that "[a]ll Germans shall have the right freely to choose ... their place of training," to impose a duty on the State to provide schooling.

Greece: "All Greeks are entitled to free education on all levels at state educational institutions." (Art. 16(4))

Ireland: "The State shall provide for free primary education." (Art. 42(4)) (this provision is not one of the directive principles; it appears, therefore to be a binding guarantee).

Italy: "Elementary education, imparted for at least eight years, is compulsory and free."

Japan: "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free." (Art. 26)

Portugal: Article 73 guarantees the right to education and culture and requires the State to promote the democratization of education and culture. Article 74 requires the State to provide free universal basic education and to take various measures to abolish illiteracy and provide free education at all levels. Article 78 requires the State to "preserve, defend and enhance the cultural heritage of the Portuguese people."

Spain: "Everyone has the right to education" (Art. 27(1))

"Basic education is obligatory and free." (Art. 27(4))

Switzerland: The Cantons shall provide for adequate primary education which shall be placed wholly under State control Such education shall be compulsory and, in public schools, free of charge." (Art. 27(2))

Turkey: "No-one shall be deprived of the right to learning and education... Primary education is compulsory and free." (Art. 42)

ENVIRONMENT

Greece: "Protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment... " (Art. 24)

Netherlands: "It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment." (Art. 21)

Portugal: Article 66 guarantees everyone "the right to an ecologically balanced human environment" and requires the State to prevent pollution, preserve national parks, promote renewable natural resources etc.

Spain: "Everyone has the right to enjoy an environment suitable for development of the person as well as the duty to preserve it." (Art. 45)

"The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment." (Art. 45(2))

Switzerland: "The Confederation shall, in carrying out its obligations, preserve the characteristic aspects of landscapes and localities of historical sites as well as of natural and cultural monuments, and it shall leave them untouched whenever general interest is dominant." (Art. 24 sexies 2)

Turkey: "Everyone has the right to live in a healthy, balanced environment. It is the duty of the State to improve the natural environment, and to prevent environmental pollution." (Art. 56)

CULTURE

Netherlands: "The authorities shall promote social and cultural development and leisure activities." (Art. 22(3))

Portugal: Article 73 guarantees the right to education and culture and requires the State to promote the democratization of education and culture. Article 74 requires the State to provide free universal basic education and to take various measures to abolish illiteracy and provide free education at all levels. Article 78 requires the State to "preserve, defend and enhance the cultural heritage of the Portuguese people."

Spain: "The public authorities shall promote and watch over access to culture, to which all have a right." (Art. 44)

Turkey: "The State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supporting and promoting measures towards this end." (Art. 63)

APPENDIX C

PROVISIONS IN THE CONSTITUTIONS OF STATES OF THE UNITED STATES THAT RELATE TO SOCIAL ASSISTANCE OR PUBLIC HEALTH

Alabama:	[I]t "shall be the duty of the legislature to require the several counties of this state to make adequate provision for maintenance of the poor." (Art. IV, s. 88)
Alaska:	"The legislature shall provide for public welfare." (Art. VII, s. 5)
California:	The legislature and the people "shall have power to provide for the administration of the relief of hardship and destitution, whether resulting from unemployment or from other cause...."(Art. XVI, ss 11)
Delaware:	"The General Assembly shall provide for the establishment and maintenance of a State Board of Health which shall have supervision of all matters relating to public health." (Art. XII, s. 1)
Georgia:	Authorizes local government to contract with public entities for the care of its indigent sick. (Art. IV, s. 3, para. 1)
Hawaii:	"We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire. We reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart toward all the peoples of the earth." (preamble)
Illinois:	[The Constitution is ordained, among other reasons, to] "eliminate poverty and inequality; assure legal, social and economic justice; [and] provide opportunity for the fullest development of the individual."(preamble)
Indiana:	Authorizes county boards to establish farms to house those who "have claims upon the ... aid of society." (Art. IX, s. 3)
Kansas:	"The ... counties of the state shall provide ... for those inhabitants who ... may have claims upon the aid of society." (Art. VII, s. 4)
Louisiana:	Authorizes the legislature to establish welfare and unemployment compensation as well as public health measures. (Art. XII, s. 8)
Michigan:	"The legislature shall pass suitable laws for the protection and promotion of public health." (Art. IV, s. 51)
Mississippi:	Authorizes a board of supervisors to provide homes to those who have claims upon the aid of society. (Art. XIV, s. 262)

Missouri: "[T]he general assembly shall establish a department of public health and welfare[.]" (Art. IV, s. 37)

Montana: "The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society." (Art. XII, s. 3(3))

New Mexico: Authorizes State and local governments to make provisions relating to the care of sick and indigent persons. (Art. IX, s. 14)

New York: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." (Art. XVII, s. 1,)

North Carolina: "Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare." (Art. XI, s. 4)

Oklahoma: "The legislature and people are authorized to provide by appropriate legislation for the relief and care of needy, aged persons who are unable to provide for themselves, and other needy persons who, on account of immature age, physical infirmity, disability, or other cause, are unable to provide or care for themselves." (Art. XXV, s. 1)

South Carolina: (Art. XII, s.1)

Texas: Authorizes the payment of assistance to the needy. (Art. III, s. 51a)

Wyoming: Requires the legislature to provide for "the health and morality of the people." (Art. VII, s. 20)